IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 111 OF 2002.

Mr. Ganpat Singh,
r/o Durgabhat, Ponda,
Native of Dhahipa de Jodhpur,
Rajasthan, presently in
Judicial Custody at Mapusa. ... Applicant.

Versus

The State through Calangute
Police Station. ... Respondent.

Mr. G. Kanekar, Advocate for the Applicant.

Mr. A.P. Lawande, Public Prosecutor for the Respondent State.

Coram: P.V. HARDAS, J.

Date: 5th August 2002.

ORAL ORDER.

This is an application filed for modification of the Order passed by the N.D.P.S. Court at Mapusa, dated 15th June 2002, in Special Criminal Case No. 5 of 2001. Mr. Kanekar, the learned counsel appearing for the applicant, submitted that this should be treated as an application under Section 482 Cr.P.C.. Accordingly, this application is treated as an application under Section 482 Cr.P.C..

2. The learned Special Judge, N.D.P.S. Court, Mapusa, in the Order dated 15th June 2002, while granting bail to the present applicant, had directed the applicant to execute a personal bond in the amount of Rs. 1 lakh and a surety in co-extensive amount to

the satisfaction of the Court. Amongst the other conditions imposed by the Court were that the applicant shall not leave the jurisdiction of the Special Judge, N.D.P.S. court, Mapusa and shall report to the Calangute Police Station on the first of every month till the conclusion of the trial.

3. The applicant moved an application for modification of the condition of furnishing a personal bond and a surety in the amount of Rs. 1 lakh. The learned Special Judge, N.D.P.S. Court, by her Order dated 29th June 2002, dismissed the application filed by the present applicant and, hence, the present proceedings in this Court.

4. One of the grounds that was urged before the learned Special Judge, N.D.P.S. Court, Mapusa, in support of reduction of the amount of bail was that the applicant is suffering from H.I.V.. The learned N.D.P.S. Court came to the conclusion that even if the amount of bail bond is reduced, the likelihood of the applicant getting private treatment because of the peculiar nature of ailment was extremely remote.

5. The allegation of the prosecution is that 1.975 kilograms was recovered from the possession of the applicant. As per the Notification issued under

the amended Act, the commercial quantity in respect of opium is 2.5 kilograms and the small quantity in respect of opium is 25 grams. The learned Special Judge, N.D.P.S. Court, Mapusa, on consideration of the provisions of the N.D.P.S. Act, came to the conclusion that the applicant was entitled to be released on bail on certain terms and conditions. The object of imposing a steep amount of bail bond is to put fetters on the inclination of an accused to abscond. However, such a steep amount in a given circumstance of the case may be such as to render the release on bail illusory because of the inability of the accused to offer the surety for the requisite amount.

6. The present application is enmeshed in an attempt on one hand, to secure the presence of the accused during the trial and on the other hand, to fix the amount of the bail bond, which the accused would be able to furnish. Mr. Lawande, the learned Public Prosecutor, also submitted that in the peculiar circumstance of this case, the amount of the bail bond be reduced to Rs. 50,000/-. After hearing the learned counsel for the parties I am of the considered opinion that in the peculiar facts of this case, the amount of bail bond deserves to be reduced. Accordingly, the Order impugned in the present application, dated 29th June 2002, is, hereby, quashed and set aside. The

Order of the learned trial Court directing the accused to furnish personal bond in the sum of Rs. 1 lakh with surety in the same amount is reduced to Rs. 50,000/-. The other conditions imposed by the learned Special Judge, N.D.P.S. Court in her Order dated 15th June 2002 remain unaltered.

7. Criminal Miscellaneous Application is allowed on the aforesaid terms.

(P.V. HARDAS)
JUDGE.

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